

AGENDA ITEM No. 12 - War-Making Powers

This pending legislation does not affect us, but attached is some interesting reading from the Congressional Quarterly.

children, some of whom will progress from use of licit medications to use of legal intoxicants at an early age and then to illegal drugs." Approved For Release 2005/06/06 : CIA-RDP75B00380R000700090002-8

July 23

Dr. Natalie Shainess, New York City psychiatrist and psychoanalyst, urged controls on mood drug advertising:

"Drug advertising is aimed—whether directly or indirectly—at a special type of consumer—one with a problem, and therefore vulnerable. It is therefore all the more reprehensible when drug concerns, following the general lead of advertising in this country, play on this very vulnerability, resort to false and misleading statements, deflect the consumer from thinking about his best interests and use educationally misinformative and maladaptive concepts....

"The extreme over-emphasis on the weakness, inability to tolerate any suffering or frustration, of the individual, is furthering a dangerous trend and promoting inadequacy. It is unfortunate that products coming within the framework of the 'healing arts' should be promoted irresponsibly.

"Since the drug companies have not been adequately self-policing, I believe there is need for corrective legislation." ✓

RURAL DEVELOPMENT

The Rural Development Subcommittee of the Senate Agriculture Committee held a hearing July 23 on bills (S 2223, S 1483) to create a Rural Community Development Bank to extend credit to rural residents.

Testimony July 23

J. Phil Campbell, Under Secretary of Agriculture, recommended revenue sharing as an alternative to S 2223:

"S 2223 in its approach to rural development places its main reliance on the creation of a permanent national banking system complete with branch banks. It is essentially a single purpose bill: to provide a specialized form of credit service for rural areas.

"The Administration, on the other hand, approaches rural development as a more complex undertaking involving people, their needs and aspirations, the social structure in which people live and work, the generation of economic activity and the creation of jobs, community development and the building and strengthening of institutional structures and supporting systems."

James B. Pearson (R Kan.), sponsor of the Rural Community Development Bank bill, testified in its behalf:

"The creation of the Rural Community Development Bank would open up a major source of capital to help finance the economic development of our rural communities. The bank would also become an extremely valuable source of expertise in community development. This would be of particular value to private entrepreneurs and small communities. Moreover, the experience of and knowledge gained from the bank's activities would eventually make a valuable contribution to national planning efforts for rural development and population growth policies."

William V. Blunt Jr., chief counsel to the Economic Development Administration, opposed S 2223:

"We do not think that there has yet been a satisfactory showing that the addition of a development bank to existing federal programs would have a substantial beneficial effect on the problems of rural areas. We are not at all sure that rural America requires a massive injection of credit in any form, much less that of another federal program administered by yet another federal bureaucracy."

John Sparkman (D Ala.), supported S 2223:

"The reorganization of the present loan programs of the Department of Agriculture provided for in this bill is needed if the funding requirements of rural areas are to be effectively

met. By placing the responsibility for all rural credit in a **Referen**
Assistant Secretary of Agriculture, S 2223 will expedite **ly Rep**
the expansion of federal loan authorization particularly **Sen. J**
non-farm programs. I feel that the Consolidated Farm **is role in**
Rural Development Act is a major step toward fulfilling **"It won**
commitment made in the Agricultural Act of 1970 to develop **id for a**
the rural areas." **an aban**
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WAR-MAKING POWERS

The Senate Foreign Relations Committee July 23 resumed hearings on a bill (S 731) and two resolutions (S J Res 18, 59) to define and limit the war-making powers of the President.

The committee held hearings on the resolutions and a bill in March, April and May. The House in 1970 passed a resolution (H J Res 1355) defining the executive war-making power and reaffirming the constitutional power of Congress to declare war. The Senate did not act on the resolution. (1970 Almanac p. 968)

Sen. Thomas F. Eagleton (D Mo.) introduced S J Res 59; S J Res 18 was introduced by **Sen. Robert Taft Jr.** (R Ohio). **Senators Jacob K. Javits** (R N.Y.) and **Claiborne** (D R.I.) introduced S 731. (Previous hearings, Weekly Report p. 1275, 1029, 743, 560)

Testimony July 26

Alexander M. Bickel, professor of law, Yale University, favored reassertion of congressional authority in war-making and limitation of executive power through stricter interpretation of constitutional provisions:

The decisions "to commit the moral and material resources of the nation to full-scale war in Vietnam seem to me to mark the farthest, and really an unprecedented, extension of presidential power.... The decisions of 1965 may have differed only in degree from earlier stages.... But there comes a point when a difference of degree achieves the magnitude of a difference in kind. The decisions of 1965 amounted to an all-but-explicit transfer of the power to declare war from Congress, where the Constitution lodged it, to the President, on whom the framers refused to confer it....

"In matters of war and peace, a succession of Presidents—well-intentioned and patriotic, to be sure—have indeed come close to canceling the effectiveness of Congress. The result is a dangerous contradiction of the principles of democratic government, which I believe ought to be set right."

"...I don't think the President can be deprived of his power to respond to an imminent threat of attack... (or) to respond to attacks and threats against our troops wherever they may be... (or) to see to the safety of our troops once they are engaged.... Congress can govern absolutely the deployment of our forces outside our borders, and... Congress should undertake to review and revise present dispositions. In this fashion the eventuality of an attack or threat of attack against our forces can be indirectly provided for.

"On the other hand... a generalized, prospective delegation by Congress to the President of the power to go to war in aid of our allies pursuant to treaty commitments gives away more of its own power than Congress may constitutionally give away by so broad a delegation...." ✓

CHINA POLICY

The Senate Foreign Relations Committee concluded hearings July 20 and 21 on four resolutions (S J Res 48 and S Res 18, 37 and 82) concerning U.S. relations with the Chinese People's Republic (Communist China).

\$154,734,000 was agreed upon for conservation activities of the Soil Conservation Service; the House had approved \$150,146,000.

Consumer Services. The House Aug. 2 by voice vote accepted for child nutrition programs, rather than the \$518,594,000 as passed by the House. For non-food assistance programs, however, conferees chose the House figure of \$16,110,000 rather than the Senate-passed \$33,000,000.

Final Action

The House July 27, by a 230-162 roll-call vote, adopted the conference report on HR 9270. (*Vote 134, Weekly Report p. 1633*)

Opposition to the conference agreement came largely from those who supported the House-passed amendment limiting crop subsidy payments to \$20,000 per crop which was deleted in conference.

The Senate July 28 by voice vote adopted the report, completing congressional action.

Robert Taft Jr. (R Ohio) questioned the inclusion by conferees of the words "person or corporation" in describing eligibility criteria for receiving crop subsidy payments. Taft noted that corporations were already counted as persons for the purposes of the bill, and that the change might be used as a new loophole. ✓

WAR-MAKING POWERS

The House Aug. 2 by voice vote under suspension of the rules, requiring a two-thirds majority vote for passage, passed a resolution (H J Res 1) reaffirming the constitutional war-making powers of Congress and the President.

H J Res 1 would require the President to submit a written explanation to Congress if he acted without prior congressional consent in committing U.S. troops to combat, sending combat-equipped forces to foreign countries or significantly enlarging military forces already stationed abroad.

The resolution also urged the President to consult Congress before sending Americans into armed conflict but recognized the President's authority to defend the nation and its citizens without specific legislative approval in extraordinary and emergency circumstances.

Supporters of the resolution said that if enacted it would make it difficult in the future for a President to take actions committing the United States to a foreign conflict without the knowledge of Congress. The reporting requirement, they said, would ensure that congressional and public reaction would be weighed in decisions on the use of U.S. forces abroad.

References. *House hearings, Weekly Report p. 1275; Senate hearings p. 1667, 1610, 1029, 743, 560; 1970 action, 1970 Almanac p. 968.*

Background. Numerous bills and resolutions on the President's war-making powers were introduced in both houses of Congress following the Cambodian incursion in May 1970.

The House Nov. 16, 1970, passed a joint resolution (H J Res 1355—H Rept 91-1547) defining the war-making powers under the Constitution. The Senate took

Clement J. Zablocki (D Wis.), chairman of the House Foreign Affairs Subcommittee on National Security Policy and Scientific Developments, on Jan. 22, 1971, re-introduced the measure, with a single modification, as H J Res 1.

Zablocki's revised resolution deleted the phrase "whenever feasible" from a provision declaring it the sense of Congress that the President should seek consultations with Congress before sending U.S. forces into armed conflict.

House Action

Committee. The House Foreign Affairs Committee July 27 unanimously reported H J Res 1 (H Rept 92-383).

The objective of the war powers bill was to "define arrangements which would allow the President and Congress to work together in mutual respect and maximum harmony toward their ultimate, shared goal of maintaining the peace and security of the nation," the committee said.

The committee said the most significant provision of H J Res 1 was the requirement that the President report to Congress on any commitment of military forces without prior congressional consent.

"While not tying the President's hands, a reporting requirement would place congressional influence far closer to the points and moments of great decision," the committee said. "It would require the President and his advisers to give thorough consideration to the judgment and reaction of Congress" as well as to legal authority for military action.

Had it been in effect during the last decade, H J Res 1 would have required reports to Congress on the 1970 U.S. incursion into Cambodia, the U.S. bombing of Laos which began in the 1960s, the dispatch of Marines to Thailand in 1962 and the decision to raise the number of U.S. advisers in Vietnam to 16,000 from 700 in 1962, the committee said.

Floor Action. H J Res 1 was not opposed in debate, although several members said they preferred a more stringent measure. Some members objected to consideration of H J Res 1 under suspension of the rules, which prohibited floor amendments, and said they had hoped to offer amendments strengthening the bill.

David W. Dennis (R Ind.), who said he voted for the resolution in 1970, questioned the omission of the phrase "whenever feasible" from the provision declaring it the sense of Congress that the President should consult Congress before taking armed action. Prior consultation might not always be possible, Dennis said.

In reply, Paul Findley (R Ill.) said he could not "recall any time in our history in which circumstances were so tight as to deny the President at least a reasonable opportunity to get on the telephone and at least inform the elected leaders of both chambers before our military forces are engaged."

Frank Horton (R N.Y.) supported H J Res 1 as an interim step but said it "provides no workable vehicle whereby the Congress can take an active role in war-making powers, nor does it provide any timetable for presidential communication to the Congress." ✓

Senate Panel Supports Curbs On Presidential War Powers

By JOHN A. FINNEY
Special to The New York Times

WASHINGTON, Feb. 10 —

The Senate Foreign Relations committee contended today that proposed legislation defining the war powers of the President represented a needed and useful step toward restoring the constitutional balance between Congress and the executive branch.

The committee began setting the stage for a constitutional debate by issuing a favorable report on a war powers bill to be considered by the Senate in the next few weeks.

The legislation would provide that in the absence of a Congressional declaration of war, the President could not use the armed forces except in certain specified emergencies, such as an attack upon the United States or its forces or an imminent threat of attack, or to protect American citizens endangered in a foreign country.

Even in such emergencies the President could not continue hostilities for more than 30 days without obtaining Congressional approval.

Wide-Ranging Support

The legislation has wide-ranging support, with the co-sponsorship of such Senators as Jacob K. Javits, Republican of New York; John Stennis, Democrat of Mississippi; Thomas E. Eagleton, Democrat of Missouri; William B. Spong Jr., Democrat of Virginia; Robert Taft Jr., Republican of Ohio; and Lloyd M. Bentsen, Democrat of Texas.

In the Senate, the bill seems likely to be opposed by some conservatives as well as by the Administration.

In a preview of the arguments ahead, Senator Barry Goldwater, Republican of Arizona, issued a statement contending that "183 years of experience under the Constitution has firmly established the principle that the President, as Commander in Chief and the primary author of foreign policy, has both a duty and a right to take military action at any time he feels danger for the country or its freedoms."

"Any legislation, such as the war powers bill, which would restrict his flexibility in these situations, is clearly unconstitutional," Senator Goldwater said.

The Goldwater views correspond generally with those of the Nixon Administration, which has objected that the proposed legislation would limit the President's flexibility in a nuclear age.

As if responding to this argument, the committee said in its report.

"No responsible citizen questions the right — or even the duty — of the President to take immediate action against a sudden attack, or imminent threat of attack, upon the United States or its armed forces.

What the committee does contest is that expansive view of executive prerogative which holds that the President may use the armed forces at will, even in conditions falling short of a genuine national emergency, and that he may sustain that use for as long as he, and he alone, sees fit."

In "additional views," Senator J. W. Fulbright, the committee chairman, supported the general purpose of the legislation but expressed concern that in defining the emergency situations in which the President might act, the provisions of the bill "may have the unintended effect of giving away more power than they withhold."

Demurer by Fulbright

For example, he said, the provision authorizing the President to "forestall the direct and imminent threat" of attack could be used "to justify almost any conceivable foreign military initiative" and could be "construed as sanctioning a pre-emptive, or first strike, attack solely on the President's own judgment."

Senator Fulbright announced that when the bill was considered by the Senate, he would offer a substitute approach that would provide that the President could use armed forces only in "a national emergency of such a nature as does not permit advance Congressional authorization," and that he could not use nuclear weapons without explicit Congressional authorization.

Senator John Sherman Cooper, Republican of Kentucky, questioned whether Congress could impose a 30-day limit on the President's emergency use of the Armed Forces.

His suggestion was that in event the President committed forces to foreign hostilities, Congress immediately be notified and proceed to consideration of the question of whether it would authorize such use of the armed forces.

Shaw
Senate Report
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OGC 72-0182

10 February 1972

MEMORANDUM FOR THE RECORD

SUBJECT: War Powers Legislation (S. 2956) and the Case Bill (S. 596)

1. Talked to Mr. Charles N. Brower, Deputy Legal Adviser, Department of State, on his letters of 31 January 1972 and 4 February 1972 to Mr. Maury with copies to Mr. Houston.

2. The 4 February letter asked for our comments on the draft strategy paper on War Powers Legislation, principally S. 2956. I advised Mr. Brower that we did not believe we had any concern with these matters and, therefore, were not commenting.

3. On the 31 January letter which involved the Case bill (S. 596), I advised we would like a change in the provisional outline of procedure for informing Congress of international agreements other than treaties. Specifically, on page 2 of paragraph (c), in the first sentence, the words "gathering and sharing" should be deleted. I stated we would like to make the sentence somewhat more general and, furthermore, in many cases, understandings relating to intelligence gathering and sharing would not be, in our minds, an international agreement. Mr. Brower seemed to understand this and referred to some previous discussions wherein this point had been raised. I attempted to make it very clear that there were a great number of arrangements that this Agency had in the intelligence area that we did not construe to be international agreements within the meaning of S. 596. Mr. Brower was appreciative of our comments.

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JOHN S. WARNER
Deputy General Counsel

cc: Legislative Counsel

TRANSMITTAL SLIP		DATE 11 Feb 72
TO: Legislative Counsel		
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REPLACES FORM 36-8
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